IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 110 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANCHMAHAL STEEL LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
MR KC PATEL for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 19/09/2000

ORAL JUDGEMENT (Per A.R.Dave, J)

At the instance of the Revenue as well as the assessee, the following questions have been referred to this Court under the provisions of Section 256(1) of the Income Tax Act (hereinafter referred to as the Act) for its opinion.

Questions referred to at the instance of the assessee:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee was not entitled to claim deduction u/s. 80 HH of the Income-tax Act, 1961 without taking into account unabsorbed depreciation of the past years while computing the gross total income for the purpose of allowing the said relief?"

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that while computing the gross total income of the assessee for the purpose of granting relief u/s. 80 HH of the Income-tax Act, 1961, the carried forward losses, deficiency etc. should also be taken into account alongwith unabsorbed depreciation?"

Questions referred to at the instance of the Revenue:

"Whether, on the facts ad in the circumstances of the case, the Tribunal was right in holding that the amount of subsidy should not be reduced from the cost of the assets for the purpose of depreciation, development rebate, investment allowance and capital employed for the purposes of Section 80J?"

2. Learned Advocates appearing for the parties have fairly submitted that all the questions which have been referred to hereinabove have now been decided by this Court.

3. So far as the first 2 questions are concerned, which have been referred at the instance of the assessee, they are squarely decided by this Court in the case of Paushak Ltd. Vs. C.I.T. reported in 210 ITR 535. Following the said judgement, we decide the said 2 questions in favour of the Revenue and against the Assessee.

4. So far as the question which has been referred to this Court at the instance of the Revenue is concerned, it has been submitted by the Learned Advocates that the said question has already been decided by this Court in I.T.R.No.44 of 1985 in the case of Whitco Ltd. Vs. Commissioner of Income Tax by judgement dated 2.8.2000. As per the law laid down by the said judgement, the amount of subsidy is not to be reduced from the cost of the assets for the purpose of depreciation, development

rebate, investment allowance and capital employed for the purposes of Section 80J. In the circumstances, the said question is answered against the Revenue and in favour of the assessee. Thus, the first 2 questions are answered against the assessee and in favour of the Revenue while the third question is answered against the Revenue and in favour of the assessee. The Reference is thus disposed of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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